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SUBJECT: Legal issues in the Loskutovs case

Ref: RIGA 771 and previous

¶1. Summary: The case of Latvia's anti-corruption bureau (KNAB) chief Aleksejs Loskutovs has engendered much discussion of various legal issues. There are two very distinct issues at play, suspension and dismissal. While inter-related in the politics of the case, from a legal standpoint they are quite separate. The legality of the Loskutov's suspension is fuzzy and depends on which law you look at and who you ask. Dismissal is slightly clearer and is closer to the US example of impeachment. There is a path of procedures in the law that must be followed, and it is being adhered to. However, steps are not defined very clearly and even participants are questioning their roles. As the final arbiter of dismissal, the Saeima is biding its time with more research, but with little hope of anything but a political outcome. End Summary

¶2. On September 28, PM Kalvitis suspended Aleksejs Loskutovs as head of the anti-corruption bureau (KNAB), alleging that the State Auditor's regular investigation of the KNAB revealed financial management irregularities. Kalvitis also began the legal process to dismiss Loskutovs from office. Loskutovs refused to honor the suspension and has been going to work ever since. Press accounts have been full of discussion of legal issues of both the suspension and proposed removal. We wanted to attempt to clarify the issues involved in these two separate processes.

¶3. Suspension is the first half of the issue. Prime Minister Aigars Kalvitis, acting as his supervisor, suspended KNAB Chief Aleksejs Loskutovs. There is now a debate as to whether that was within Kalvitis' power. The labor law states that Kalvitis can suspend Loskutovs, but only if he is doing something illegal. Kalvitis contends that he was within his rights because of irregularities in the financial operations of the KNAB. Though the State Auditor's office has admitted that these irregularities would not normally merit the level of attention and discipline chosen by the Prime Minister, no public analysis or judgment can be made because the results of the audit are classified. Kalvitis continues to base his decision on the audit results

¶4. The Prosecutor General, Janis Maizitis, formally protested against Kalvitis' assertion that he had the legal ability to suspend Loskutovs. Maizitis opposed Kalvitis' decision in a letter to the Prime Minister, stating that there was no legal basis for the action, that the KNAB violations were not substantial and Loskutovs should not be suspended or dismissed from his post. (Note: The law says that the Prosecutor General may suspend the chief if he is arrested or if he is under criminal prosecution. Penalties for violations by its director are not defined. End note.)

¶5. Loskutovs has legally appealed to the civil court to contest the prime minister's decision to suspend him. He points to several breaches of normative acts performed by the prime minister and asserts that Kalvitis exceeded his power by suspending him. Loskutovs also states that Kalvitis failed to observe correct procedure when issuing the suspension decree.

¶6. Additionally, Loskutovs has presented an application to the Prosecutor General's office stating that Kalvitis acted with a

conflict of interest when he suspended him. The basis for this application is that Kalvitis' political party (People's Party) is under investigation for campaign financing violations, and will be subject to a hefty fine and the return of over half a million lats (approximately one million dollars) to the Latvian government.

¶7. Legal experts we have spoken to say that the law on suspension is murky. Under some of the laws that apply, Kalvitis, as Loskutovs' supervisor, would have the power to suspend him. Under other laws, including the law on the KNAB, it does not appear that suspension is possible. A court ruling, and possibly multiple appeals by both sides, would be needed to sort this out.

¶8. Dismissal is the second half of the issue. It is closer to what Americans would understand as impeachment. According to the law on the KNAB, when there are questions about the suitability of the KNAB chief, the government forms an ad hoc committee headed by the Prosecutor General to advise whether to dismiss. The law does not set out what might be used as reasons to dismiss. At the same time that Kalvitis suspended Loskutovs, he formed such a committee pursuant to the law. Maizitis said that the committee's lack of clear rules of procedure prevented them from making a recommendation on the dismissal of Loskutovs, although he himself said he did not think it was warranted. On October 16, the government chose to support the road to dismissal with the cabinet formally recommending to the Saeima that Loskutovs be removed from office. That is the next step required under the law.

¶9. The Saeima is now tasked with voting on Loskutovs' dismissal. It was originally expected during the week that the government submitted their decision in favor of firing Loskutovs. However, it has now been delayed, largely due to the political backlash against the government's actions. According to rules of parliament, the decision of the Saeima Legal Committee should be ready within two weeks of receipt of the application, which would be November 2.

RIGA 00000811 002 OF 002

However, the rules do not provide any sanctions for extending the deadline. The Saeima's legal advisor, Gunars Kusins, told us that he believed the committee would need more time both because of the heavy workload of the committee and the planned absence from Latvia of key figures from whom the committee will want to hear. The committee has decided to hear from several officials including the Auditor General, Prosecutor General Maizitis, Prime Minister Kalvitis and Loskutovs himself.

¶8. Comment: From a political standpoint and in much of the press, the two processes are conflated. Legally the validity of the suspension does not have any bearing on the dismissal of the KNAB chief. The dismissal process is well underway, and it appears that the steps to date have followed the law. Because the Saeima is the final arbiter, it is hard to imagine anything other than a political outcome. And Loskutov's fate will have far less to do with the evidence than with the decision made in party rooms on how to handle the issue. Because the laws governing the suspension are less clear, there may very well be a situation where the suspension may be ruled illegal, but Loskutovs will still be dismissed. In fact, it's entirely possible that litigation over the suspension could drag out long after the decision is taken on dismissal. End comment

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